

ORDER NO. 4799

UNITED STATES OF AMERICA
POSTAL REGULATORY COMMISSION
WASHINGTON, DC 20268-0001

Before Commissioners:

Robert G. Taub, Chairman;
Tony Hammond, Vice Chairman;
Mark Acton; and
Nanci E. Langley

Competitive Product Prices
Inbound EMS 2 (MC2009-10)

Docket No. CP2018-287

ORDER APPROVING CHANGES IN PRICES
NOT OF GENERAL APPLICABILITY FOR INBOUND EMS 2

(Issued August 28, 2018)

I. INTRODUCTION

The Postal Service requests a change in prices not of general applicability for Inbound EMS 2 effective January 1, 2019.¹ The Commission analyzes the proposed prices pursuant to 39 U.S.C. § 3633. For the reasons discussed below, the Commission approves the Postal Service's request.

¹ Notice of the United States Postal Service of Filing Changes in Rates Not of General Applicability for Inbound EMS 2, and Application for Non-Public Treatment, August 13, 2018 (Notice).

II. BACKGROUND

Product description. Inbound EMS 2 covers EMS documents and merchandise received from foreign posts for delivery in the Postal Service's domestic delivery area. The Commission approved its addition to the competitive product list in 2008.² The Commission has approved eight annual proposed rate changes for Inbound EMS 2, each effective January 1, for the years 2010 through 2016 and 2018.³

Instant filing. The Postal Service's Notice, which proposes to revise the Inbound EMS 2 prices effective January 1, 2019, is the latest in a series of price change proposals that the Postal Service has filed since the product's introduction. The Postal Service maintains that the proposed prices are in accordance with the terms of Governors' Decision No. 11-6 and comply with the requirements of 39 U.S.C. § 3633(a)(2). See Notice at 5, Attachment 3.

Initial Commission action. In Order No. 4759, the Commission provided notice of the Postal Service's filing, appointed a Public Representative, and provided the public with an opportunity to comment.⁴ Chairman's Information Request No. 1 was issued on

² See Docket Nos. MC2009-10 and CP2009-12, Order Adding Inbound International Expedited Services 2 to Competitive Product List, December 31, 2008 (Order No. 162). Subsequently, the Commission approved the Postal Service's request to change the product name to Inbound EMS 2. See Docket No. CP2013-77, Order Approving Rate and Classification Changes for Inbound International Expedited Services 2, August 30, 2013 (Order No. 1822).

³ Docket No. CP2009-57, Order Concerning Filing of Changes in Rates for Inbound International Expedited Services 2, August 19, 2009 (Order No. 281); Docket No. CP2010-90, Order Concerning Filing of Changes in Rates for Inbound International Expedited Services 2, August 23, 2010 (Order No. 523); Docket No. CP2011-66, Order Approving Changes in Rates for Inbound International Expedited Services 2, August 16, 2011 (Order No. 806); Docket No. CP2012-52, Order Approving Rate Changes for Inbound International Expedited Services 2, August 30, 2012 (Order No. 1456); Docket No. CP2013-77, Order Approving Rate and Classification Changes for Inbound International Expedited Services 2, August 30, 2013 (Order No. 1822); Docket No. CP2014-58, Order Approving Changes in Rates Not of General Applicability for Inbound EMS 2, August 1, 2014 (Order No. 2140); Docket No. CP2015-117, Order Approving Changes in Rates Not of General Applicability for Inbound EMS 2, August 12, 2015 (Order No. 2656); Docket No. CP2017-271, Order Approving Changes in Prices Not of General Applicability for Inbound EMS 2, August 30, 2017 (Order No. 4081).

⁴ Notice and Order Concerning Changes in Rates for Inbound EMS 2, August 14, 2018 (Order No. 4759).

August 17, 2018, and requested information to clarify the Postal Service's Notice.⁵ The Postal Service responded to CHIR No. 1 on August 23, 2018.⁶

III. COMMENTS

The Public Representative filed comments on August 21, 2018.⁷ No other comments were received. The Public Representative notes that the Postal Service provides the minimum and maximum cost coverage for the Inbound EMS 2 product. PR Comments at 2. She concludes that the proposed rates for Inbound EMS 2 should generate sufficient revenues to cover cost. *Id.* She notes, however, that the minimum cost coverage calculation assumes that the Postal Service would not be penalized for missing Pay-for-Performance (PFP) Plan targets. *Id.* Because these penalties may further reduce revenue, the Public Representative states that the minimum cost coverage estimate may not represent the lowest possible cost coverage. However, she notes that "it is unlikely that penalties would reduce the cost coverage below what is permissible under 39 U.S.C. § 3633(a)." *Id.* Based upon her review of all the materials the Postal Service submitted under seal, she recommends that the Commission approve the proposed Inbound EMS 2 prices. *Id.* at 3.

⁵ Chairman's Information Request No. 1, August 17, 2018 (CHIR No. 1).

⁶ Responses of the United States Postal Service to Chairman's Information Request No. 1, August 23, 2018 (Response to CHIR No. 1). On August 22, 2018, the Postal Service requested a one-day extension to file its responses to CHIR No. 1. Motion of the United States Postal Service for Extension to File Responses to Chairman's Information Request No. 1, August 22, 2018 (Motion). The Postal Service states that a one-day extension was necessary for the Postal Service to "have adequate time to ensure that the responses and revised financial workpapers accurately incorporate such penalties[.]" Motion at 1. The Postal Service also states that the extension will not prejudice any party submitting comments. *Id.* at 2. The Commission grants the Postal Service's Motion.

⁷ Public Representative Comments on Postal Service Notice of Filing Changes in Rates Not of General Applicability for Inbound EMS 2, August 21, 2018 (PR Comments).

IV. COMMISSION ANALYSIS

Proposed Inbound EMS 2 prices. The Commission reviews price changes for competitive products in accordance with the requirements of 39 U.S.C. § 3633(a) and 39 C.F.R. § 3015.7. These requirements prohibit the subsidization of competitive products by market dominant products (39 U.S.C. § 3633(a)(1)); require each competitive product to cover its attributable costs (39 U.S.C. § 3633(a)(2)); and require competitive products as a whole to cover an appropriate share of institutional costs (39 U.S.C. § 3633(a)(3)).

The Commission has reviewed the Notice, supporting documentation, the Public Representative's comments, and the Postal Service's Response to CHIR No. 1 in light of the requirements in 39 U.S.C. § 3633(a)(1)-(a)(3). As a result of this review, the Commission finds that the prices presented in the Notice should not lead to the subsidization of competitive products by market dominant products; should cover attributable costs; and should have a positive effect on the contribution that competitive products make to institutional costs. Thus, the Commission finds that the planned prices for Inbound EMS 2 satisfy the applicable statutory criteria and regulatory requirements of 39 U.S.C. § 3633(a) and 39 C.F.R. § 3015.7.

Pay-for-Performance penalties. Under the EMS Cooperative's CY 2018 PFP Plan,⁸ the prices that foreign postal operators pay the Postal Service for the delivery of Inbound EMS 2 are subject to potential penalties based on the Postal Service's service performance. In Order No. 2140, the Commission directed the Postal Service to provide an affirmative statement addressing whether the Postal Service incurred PFP penalties in the most recent calendar year for which annual performance results are available with Inbound EMS 2 price changes. Order No. 2140 at 5. In addition, the

⁸ The EMS Cooperative is a voluntary body of the Universal Postal Union (UPU), comprised of designated postal operators of UPU member countries, that aims to promote cooperation between members to allow them to provide their customers with a high-quality EMS service on a global basis. The EMS Cooperative administers an annual PFP Plan that links payment for EMS delivery to service performance. The CY 2018 PFP Plan is the latest available.

Commission directed the Postal Service, to the extent feasible, to account for potential PFP penalties, based upon performance results from the Postal Service's most recent annual PFP Report Card.⁹ The Commission also directed the Postal Service to explain what its PFP penalty factor reflects and ordered the Postal Service to provide the most recent annual PFP Plan available, along with its most recent annual PFP Report Card and all available quarterly PFP Report Cards for the calendar year preceding the effective date of the Inbound EMS 2 prices. *Id.* at 5-6.

In Docket No. CP2015-117, the Postal Service provided the most recent annual PFP Plan available, along with its most recent annual PFP Report Card and all available quarterly PFP Report Cards for the calendar year preceding the effective date of the proposed Inbound EMS 2 prices that were the subject of the filing.¹⁰ In the supporting financial workpapers, the Postal Service also provided information on whether or not the Postal Service received PFP penalties in the most recent calendar year for which annual performance results were available. However, the Postal Service did not calculate an estimated PFP penalty in the financial workpapers for the Inbound EMS 2 prices that were the subject of that docket.

In Order No. 2656, the Commission acknowledged that, based on recent performance history, any penalties were likely to be small and should not cause the project cost coverage to fall below 100 percent. Order No. 2656 at 4, n.7. However, the Commission ordered the Postal Service to include in supporting financial models for future Inbound EMS 2 price changes any PFP penalties incurred in the last calendar year for which Report Cards were available, even if the effect on cost coverage was small. *Id.* at 4.

In Docket No. CP2017-271, the Postal Service filed both the CY 2017 PFP Plan and its annual report card for CY 2016 and quarterly report cards for quarters 1 and 2 of

⁹ *Id.* The Postal Service receives quarterly and annual Report Cards from the EMS Cooperative on its service performance for Inbound EMS 2.

¹⁰ Docket No. CP2015-117, Notice of the United States Postal Service of Filing Changes in Rates Not of General Applicability for Inbound EMS 2, July 31, 2015, Attachment 5.

CY 2017.¹¹ The Postal Service also incorporated a financial penalty in its supporting financial workpapers, but did not provide an explanation of what the penalty reflected, as the Commission directed in Order No. 2140. The Commission concluded that the failure of the Postal Service to provide an explanation of what the penalty reflected should not prevent compliance with 39 U.S.C. § 3633(a). Order No. 4081 at 6. However, the Commission directed the Postal Service to provide a detailed explanation of the penalty calculation in the financial workpapers in future filings of changes in prices for the Inbound EMS 2 product. *Id.* at 7. The Commission further directed that this explanation should explicitly link the Postal Service's penalty calculation to its most recent annual PFP Report Card results and the most recent PFP Plan. *Id.*

The Postal Service's Notice did not incorporate PFP penalties into the financial workpapers, provide an explanation of what the penalty reflected, or link the penalty calculation in the financial workpapers to the most recent PFP Report Card results and the most recent PFP Plan as required by Order Nos. 2140, 2656, and 4081. The Postal Service provided revised workpapers that incorporate the aggregated historical penalties assessed against the Postal Service and the required explanations relating to the calculation of the penalty in total and linking the calculation to the most recent PFP Report Cards and PFP Plan. Response to CHIR No. 1, question 1.b and 1.c. The Postal Service, however, did not provide the workpapers used to calculate the penalty described in its Response to CHIR No. 1, question 1.b. To ensure the transparency of the Inbound EMS 2 Product, the Postal Service must provide workpapers used to calculate the historical Inbound EMS 2 PFP penalty with its Annual Compliance Reports and in future requests to change these prices.

¹¹ Docket No. CP2017-271, Notice of the United States Postal Service of Filing Changes in Rates Not of General Applicability for Inbound EMS2, and Application for Non-Public Treatment, August 16, 2017, Attachments 5 and 6.

V. ORDERING PARAGRAPHS

It is ordered:

1. The Commission finds that the proposed Inbound EMS 2 prices, scheduled to take effect January 1, 2019, are in accordance with the relevant statutory and regulatory requirements of 39 U.S.C. § 3633(a) and 39 C.F.R. § 3015.7.
2. The Postal Service shall continue to include in its supporting financial models for all future filings for changes in Inbound EMS 2 prices any Pay-for-Performance penalties incurred in the last calendar year for which Pay-for-Performance Report Cards are available, even if the effect on cost coverage is small.
3. The Postal Service shall continue to provide a detailed explanation of the penalty calculation in future financial workpapers for changes in prices for Inbound EMS 2. The explanation shall explicitly link the penalty calculation to the most recent annual report card and the most recent Pay-for-Performance Plan.
4. The Postal Service must provide the workpapers used to calculate the Pay-for-Performance penalty with its Annual Compliance Reports and in future requests to change Inbound EMS 2 prices.

By the Commission.

Stacy L. Ruble
Secretary